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No. 84-499

In The

Supreme Court of the United States

October Term, 1984

FRED V. SASSO,

Appellant,

vs.

RAM PROPERTY MANAGEMENT AND FIREMAN'S FUND INSURANCE CO.,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

MOTION TO DISMISS OR AFFIRM FILED ON BEHALF OF RAM PROPERTY MANAGEMENT AND FIREMAN'S FUND INSURANCE COMPANY

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OCTOBER, 1984

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Appellees, Ram Property Management and Fireman's Fund Insurance Company, respectfully move, pursuant to Rule 16.1, Rules of the Supreme Court of the United States (1980 Revision), the Court to dismiss the appeal or, in the alternative, to affirm the judgment of the Florida Supreme Court on the grounds that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I.

THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

A. The Statute

This appeal raises the question of the constitutionality of a provision in the Florida "Workers Compensation Act", Florida Statute 440.15(3)(b) 3.D (1979). This statute provides that a workers compensation claimant's right to wage loss benefits shall terminate when the injured employee reaches age 65.

B. The Proceedings Below

The Appellant, who was seventy-eight years old on the date he was injured, filed a claim for wage loss benefits in accordance with the procedure set forth in the Florida Workers Compensation Act.

The Deputy Commissioner found that the claimant was barred form receiving wage loss benefits based upon Florida Statute 440.15(3)(b) 3.D. (1979) which provides in pertinent part:

> The right to wage loss benefits shall terminate:
> . . .
> D. When the injured employee reaches age 65 . . . § 440.15(3) (b) 3.D. Fla. Stat. (1979).

The Appellant appealed the decision of the Deputy Commissioner to the District Court of Appeal, State of Florida, First District contending that the statute which discontinued wage loss benefits at age sixty-five violated his access to the courts as established in Article I, Section II of the Florida Constitution and that it unconstitutionally discriminated against him on the basis of age in vio-

lation of the Fourteenth Amendment to the United States Constitution and the corollary provision of the Florida Constitution, Article I, Section IX.

The First District Court of Appeal upheld the validity of the statute and denied the Appellant the relief sought. Upon appeal to the Florida Supreme Court the decision of the lower court was affirmed. 452 So. 2d 932 (Fla. 1984).

II.

ARGUMENT AND CITATION OF AUTHORITY

A. This Appeal Does Not Present A Substantial Federal Question.

It is apparent that the judgment of the Florida Supreme Court in this case does not present a substantial federal question. A state's ability to set up and administer a compensation system is within its power and is not a function which should be intruded upon. U.S. Const., Amend. X, see generally, *National League of Cities v. Usery,* 426 U.S. 833 (1976).

The decision rendered in the case effects a very narrow class of people nationwide, and in fact it effects only a very limited number of people within the State of Florida. More specifically, the statute which is the subject of this appeal governs the award of a very narrow class of benefits. Although it limits a claimant's entitlement to wage loss benefits upon the occurrence of any one of the four conditions specified in Florida Statute 440.15(3)(b)3 it does not in any way effect the claimant's right to any of the other compensation benefits provided by Florida Workers Compensation Act, Chapter 440 Florida Statutes. In addition to the limited scope of benefits effected by the statute, the statute also effects only a very narrow class

of people. By its terms it limits benefits recoverable only to claimants who are over sixty-five years of age, actively engaged in employment who sustain an on the job injury and subsequently want to reenter the work force. § 440.15 (3)(b) 3.D. Fla. Stat. (1979) Additionally, the fact that the statutory provision in question in this case has been subsequently amended to delete the provision terminating wage loss benefits at age sixty-five, § 440.15(3)(b) 3 Fla. Stat. (1983), further limits the number of Floridians who are effected by the statute in question.

The standards which are to be applied in order to determine whether classification based upon age violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution are firmly established. This court has rejected age as being a suspect or quasi-suspect class which triggers a heightened standard of review, *Massachusetts Board of Retirement v. Murgia,* 427 U.S. 313, 314 (1976). A state does not violate the equal protection clause of the Fourteenth Amendment to the United States Constitution simply because the classification made by its law is imperfect. If the classification has a reasonable basis, it does not offend the Constitution simply because the classification is not made with mathematical nicety or results in some inequality. *Dandridge v. Williams,* 397 U.S. 485-486 (1970), *Lindsley v. Natural Carbonic Gas Co.,* 220 U.S. 78-79 (1911). In fact, as this Honorable Court recognized in *Massachusetts Board of Retirement v. Murgia, supra,* there is a relationship between old age and a decrease in productivity. Therefore, it is not logical to assume that the alteration of workers compensation benefits based on age does not advance a legitimate State interest.

The two state appellate courts which have considered this case have thoroughly reviewed the Constitutional arguments raised, and in applying the standards as enunciated by the Florida Supreme Court as well as those established by the United States Supreme Court have unequivocally concluded that Section 440.15(3)(b) 3.D. (Fla. Stat. 1979) furthers legitimate state objectives and that the age based discrimination was rationally related to furthering these goals. In that there is no requirement of a heightened judicial review of an age restriction, the rational basis test was correctly applied to Florida Statute § 440.15(3)(b)3.D and the Florida courts correctly held that statutory provision does not violate the appellant's right to equal protection under the law.

B. Adequate and Independent Non-Federal Grounds Support the Florida Supreme Court's Determination that the Appellant's Constitutional Claims Lack Merit.

The decision of the Florida Supreme Court is clearly correct. Judgment rests upon an adequate non-federal basis; review of the opinions rendered by the lower courts in this cause reveal that the decision was not necessarily based upon federal grounds. Although the Florida appellate courts admittedly applied the federal equal protection standards as enunciated by this Honorable Court it is clear that the decisions construed the validity of a provision of a state workers compensation system within the framework of a state constitution. The State of Florida District Court of Appeal, First District explicitly applied the Florida Equal Protection clause and based upon that held that the statute in question did not violate the Equal Protection clause of Article I, Section II of the Florida Constitution.

III.

CONCLUSION

Clearly, it cannot be said that there is no national basis to support § 440.15(3)(b) 3.D. Fla. Stat. (1979). The statute bears a rational relationship to the legitimate state goals of adjusting fringe benefits as a result of a related decline in productivity, introducing younger workers into the state's job market and reducing costs of insurance premiums to employers. Therefore, the Statute does not violate the Appellant's right to equal protection and it must be upheld.

Wherefore, the Appellee respectfully submits that the questions upon which this cause depend are so unsubstantial as not to need further argument and the Appellee respectfully moves the Court to dismiss this Appeal, or, in the alternative to affirm the judgment entered in this cause by the Supreme Court of the State of Florida.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing have been served by U.S. Mail in accordance with Rule 28, Rules of the Supreme Court of the United States (1980 Revision) on this 26th day of October, 1984 to Irvin A. Meyers, Esquire, 17 South Lake Avenue, Orlando, Florida 32801; to Honorable Jim Smith, Attorney General of the State of Florida, The Capitol, Tallahassee, Florida, 32301; and forty copies have been served in the same manner to the Clerk of the United States Supreme Court.

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